

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF SEATTLE,

Plaintiff,

v.

ZYLAB NORTH AMERICA, LLC,

Defendant.

CASE NO. C17-0790-JCC

ORDER

This matter comes before the Court on Defendant's motions to compel discovery (Dkt. Nos. 39, 44). Having thoroughly considered the parties' briefing and the relevant record, the Court hereby GRANTS in part and DENIES in part the motions for the reasons explained herein.

**I. BACKGROUND**

The Court has described the factual background of this case in previous orders. (*See, e.g.*, Dkt. No. 43 at 1–2.) The Court issued an order on Plaintiff's motion to compel. (*Id.*) Defendant has filed two separate motions to compel: one dealing with interrogatories (Dkt. No. 39), the other with production of documents (Dkt. No. 44). The Court addresses both in this order.

**II. DISCUSSION**

Discovery motions are strongly disfavored. The party resisting discovery has the burden to establish when limitations are appropriate. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). Defendant asks the Court to compel Plaintiff to respond to numerous

interrogatories and to produce documents in accordance with its requests for production. (Dkt. Nos. 39 at 2; 44 at 11.) The Court resolves these issues as they appear in Defendant's motions.

**A. Interrogatories**

Defendant asserts that Plaintiff has not sufficiently answered its interrogatories numbered 2, 5, 8, 11, and 16–21 and asks the Court to order Plaintiff to respond. (Dkt. No. 39 at 2.)

Defendant's interrogatory number 2 states: "For each breach of contract please state each and every fact upon which you contend ZyLAB breached the portion of that contract." (Dkt. No. 51 at 26.) In its amended response, Plaintiff objected that the request for "each and every fact" is overbroad and referred Defendant to other documents produced in discovery. (*Id.*) Plaintiff's response is inadequate. The Federal Rules expressly direct that "[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact[.]" Fed. R. Civ. P. 33(a)(2).

Defendant's interrogatories seek to clarify the facts underlying Plaintiff's claims. Such a response would meaningfully contribute to clarifying issues in the case and narrowing the scope of the dispute. Plaintiff has not adequately demonstrated that the answer to this interrogatory could be determined by examining the business records it has produced in discovery. *See* Fed. R. Civ. P. 33(d). Furthermore, the Court is not persuaded by Plaintiff's overbreadth argument because it did not even attempt to respond to the interrogatory. Plaintiff is therefore ORDERED to provide a supplemental response answering Defendant's interrogatory number 2 with specificity.

Defendant's interrogatory number 5 states: "Please state each and every fact which supports the allegation in the Complaint that Central Puget Sound Regional Transit Authority terminated a contract with ZyLAB on November 6, 2009." (Dkt. No. 51 at 28). In its amended response, Plaintiff states that "[t]he produced records contain all facts in the City's possession that support Plaintiff's allegation that Central Puget Sound Regional Transit Authority terminated a contract with ZyLAB on November 6, 2009." (*Id.* at 28–29.) Plaintiff refers

1 Defendant to 79 pages of documents produced in discovery and cites to Federal Rule of Civil  
2 Procedure 33(d) as supporting its response. (*Id.* at 29.) Plaintiff's response is inadequate because  
3 it has not demonstrated that "the burden of deriving or ascertaining the answer [to Defendant's  
4 interrogatory] will be substantially the same for either party." Fed. R. Civ. P. 33(d). Nor is the  
5 Court satisfied that Plaintiff has described the records in sufficient detail to allow Defendant to  
6 derive the answer to its interrogatory. *Id.* at (d)(1). Plaintiff is therefore ORDERED to provide a  
7 supplemental response answering Defendant's interrogatory number 5 with specificity.

8 Defendant's interrogatory number 8 states: "Please state each and every fact that You  
9 contend ZyLAB negligently, intentionally or fraudulently misrepresented or omitted in response  
10 to the City's RFP as alleged at ¶ 4.16 of the Complaint." (Dkt. No. 51 at 31).

11 In its amended response, Plaintiff states that "produced records contain facts supporting  
12 the City's contention that ZyLAB negligently, intentionally, or fraudulently misrepresented or  
13 omitted in response to the City's RFP as alleged at ¶ 4.16 of the Complaint." (*Id.*) Plaintiff again  
14 refers Defendant to 79 pages of documents produced in discovery and cites to Federal Rule of  
15 Civil Procedure 33(d) as supporting its response. (*Id.* at 31–32.) Plaintiff's response is inadequate  
16 because it has not demonstrated that "the burden of deriving or ascertaining the answer [to  
17 Defendant's interrogatory] will be substantially the same for either party." Fed. R. Civ. P. 33(d).  
18 Nor is the Court satisfied that Plaintiff has described the records in sufficient detail to allow  
19 Defendant to derive the answer to its interrogatory. *Id.* at (d)(1). Plaintiff is therefore ORDERED  
20 to provide a supplemental response answering Defendant's interrogatory number 8 with  
21 specificity.

22 Defendant's interrogatory number 11 states: "Please state each and every fact that  
23 supports You [sic] contend that ZyLAB had a contract termination history which was required to  
24 be disclosed to the City's RFP as alleged in the complaint." (Dkt. No. 51 at 33.)

25 In its amended response, Plaintiff states that "produced records contain all facts in the  
26 City's possession that support Plaintiff's contention that ZyLAB had a contract termination

1 history which was required to be disclosed to the City's RFP as alleged in the Complaint." (*Id.* at  
2 34.) Plaintiff again refers Defendant to 79 pages of documents produced in discovery and cites to  
3 Federal Rule of Civil Procedure 33(d) as supporting its response. (*Id.*) Plaintiff's response is  
4 inadequate because it has not demonstrated that "the burden of deriving or ascertaining the  
5 answer [to Defendant's interrogatory] will be substantially the same for either party." Fed. R.  
6 Civ. P. 33(d). Nor is the Court satisfied that Plaintiff has described the records in sufficient detail  
7 to allow Defendant to derive the answer to its interrogatory. *Id.* at (d)(1). Plaintiff is therefore  
8 ORDERED to provide a supplemental response answering Defendant's interrogatory number 11  
9 with specificity.

10 Defendant's interrogatories numbered 16–21 ask Plaintiff to "state each and every fact"  
11 that supports their affirmative defenses of estoppel, fraud, release, ratification, waiver, and  
12 unclean hands. (Dkt. No. 51 at 37–43.) Plaintiff objects on numerous grounds—that the  
13 responses seek privileged information and legal conclusions, that the interrogatories are  
14 overbroad, and that further discovery will inform its answers because many of the facts exist in  
15 documents Defendant has not produced. (*Id.*)

16 Plaintiff provides no specific facts regarding its affirmative defenses to Defendant's  
17 counterclaim for breach of contract. Plaintiff's unresponsive answers are inadequate because  
18 Defendant as a counterclaimant is entitled to know the factual basis for Plaintiff's affirmative  
19 defenses. *See U.S. ex rel. O'Connell v. Chapman Univ.*, 245 F.R.D. 646, 649 (C.D. Cal. 2007).  
20 This requirement is consistent with Federal Rule of Civil Procedure 11, which requires plaintiffs  
21 to have some factual basis for allegations in their complaint. *Id.* (citation omitted). The facts  
22 sought by Defendant are clearly relevant under Federal Rule of Civil Procedure 26. Plaintiff's  
23 general, boilerplate objections do not support its nonresponsive answers, and its overbreadth  
24 argument is not persuasive because it did not even attempt to respond to the interrogatories.  
25 Plaintiff is therefore ORDERED to provide a supplemental response answering Defendant's  
26 interrogatories 16–21 with specificity.

1           **B. Requests for Production**

2           Defendant asks the Court to order Plaintiff to respond to its requests for production  
3 numbered 1–40, providing all responsive, non-privileged documents. (Dkt. No. 44-1 at 2–3.) In  
4 response, Plaintiff states that it has subsequently produced the documents sought by Defendant.  
5 (Dkt. No. 49 at 4.) Since Defendant filed its motion to compel, the parties have entered into a  
6 stipulated protective order and Plaintiff has begun producing the documents Defendant  
7 requested. (Dkt. Nos. 48; 49 at 4.) Plaintiff has subsequently produced more than 23,000 pages  
8 of responsive documents. (Dkt. No. 49 at 4.) Defendant acknowledges that it has received these  
9 documents. (Dkt. No. 54 at 2.) Plaintiff also asserts that it will continue producing responsive  
10 documents as discovery is ongoing. (Dkt. No. 50 at 2.)

11           At this point, Defendant asks the Court to order Plaintiff to produce documents within 14  
12 days, provide a privileged document log, and overrule all of Plaintiff’s objections other than  
13 those based on privilege. (Dkt. No. 53 at 3.) The Court is not going to order Plaintiff to produce  
14 documents because it appears from the record that Plaintiff has responded to Defendant’s  
15 requests. (Dkt. No. 49 at 4.) Plaintiff is required to supplement its responses if it learns of  
16 additional responsive information. Fed. R. Civ. P. 26(e)(1)(A). Because Plaintiff has produced  
17 the responsive documents, the Court will not issue an order overruling Plaintiff’s previously  
18 lodged general objections. Therefore, Defendant’s request that the Court order production and  
19 overrule Plaintiff’s general objections is DENIED.

20           Plaintiff may withhold responsive documents if they are protected by the attorney-client  
21 or work product privilege. *See* Fed. R. Civ. P. Rule 26(e). But, to the extent Plaintiff has objected  
22 to Defendant’s requests for production based on privilege, Plaintiff must produce a privileged  
23 document log identifying the withheld documents. *Id.* The Court ORDERS Plaintiff to provide  
24 Defendant with a privileged document log within 14 days of the issuance of this order.

25           **III. CONCLUSION**

26           For the above reasons, Defendant’s motions to compel discovery (Dkt. Nos. 39, 44) are

1 GRANTED in part and DENIED in part. Accordingly, the Court ORDERS that:

2 (1) Within 14 days of this order, Plaintiff shall provide supplemental responses to

3 Defendant's interrogatories numbers 2, 5, 8, 11, and 16–21.

4 (2) Within 14 days of this order, Plaintiff shall provide Defendant with a privileged

5 document log that identifies responsive documents that have been withheld on the

6 basis of privilege.

7 (3) Defendant's motion for the Court to order Plaintiff to respond to its requests for

8 production within 14 days and overrule Plaintiff's objections is DENIED.

9 Further, the parties are ORDERED to meet and confer to resolve future discovery  
10 disputes.

11 DATED this 2nd day of November, 2017.

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15 John C. Coughenour  
16 UNITED STATES DISTRICT JUDGE  
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